

G. R. S. 58]

Previous references.

S.R. 229-12-2

1914. 15

(Courts)

Later references.

File No. 745-14.

Serial Nos. 1-3

Preserve
Am
27/4/16.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-3

Part B for April 15

SUBJECT.

Punishment for offences under
Excise Law (R.A. Subj No 419-13).

1.

Of the Regt. Chief of 27795 of 19²/₁₅
Call for the opinion of the judge in the
matter.

2.

From the same Office 4111 - of 9/3/15
280
Forward the opinion called for

3.

Of the same Office, } of 3354-5
" D.M. Shindof } of 3/4/15
State that the objection to the circular
cannot be sustained & that the discretion of the
magistrate is not thereby taken away.

GPB-3,500-21-7-14

M. G. Horns

17.4.15.

1914-15

GENERAL AND REVENUE SECRETARIAT.

(*Couns*)

NOTES.

File No. 245-11

FILE HEADING.

*Punishment for offences under Excise Laws.
(R.A. Subject no 419-13).*

From

No.

Dated

Received

Diary No.

Enclos.

Spare Copies.

Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

NOTES—First Sheet.

SUBJECT No. 419.

Punishment for offences
under Excise Laws.

Mr. S. R. Balakrishna Rao, Shi-
moga municipality.

putup

Summary of Representation.—The circular letter No. 183, dated 19th January 1911, issued by the Chief Court, calls the attention of Magistrates to the general inadequacy of sentences passed in excise cases. It is submitted that this circular goes beyond the provisions of the Chief Court Regulation, I of 1884. The adequacy or otherwise of the sentence passed in each case is to be judged on its merits. To issue such general instructions in judicial matters is tantamount to interference with judicial independence and discretion of the Magistracy. It is prayed that the circular may be recommended to be withdrawn and the Magistrates and Judges allowed to exercise an unfettered discretion.

Specific instances of inadequate sentences may be picked out and revised and adequate sentences passed by the Chief Court. In cases of unduly lenient sentences, the Magistrates concerned may be furnished with the remarks of the Chief Court passed on the revision side for enhancing the sentences.

Sl. Book 63-13

Notes

Chief Court — Wallace J. It is not obvious how the Chief Court's Circular interferes with the discretion of the Magistrates.

Section Notes 2) If the circular comes within the powers of superintendence and control in the Chief Court over all courts, ^{vested} Civil and Criminal (vide Sec 10 of the Chief Court Regulation) the objection is unsustainable.

3) But the circular appears to go beyond administrative powers.

Subs 4) May the opinion of the Chief Court be invited? Drafted for approval or other orders.

SM
24/2

1844
13/1/15

5) Issue

18
5/1/15

Serial
No.

1

To The Registrar, Chief Court
no J2795 of 19.2.1915

Calls for the opinion of the Judges of
the Chief Court on the representation.

2

From the Same Office

no $\frac{4111}{280}$ of 9.3.1915

Forwards the opinion called for.

Submitted.

kg. gll

15/3/15 - of which is the circular no 1902? Put up for

8/10/15

19/3

P. 151 of 29.1.62.
Page 68 of the
C.R. 1915

A copy of the circular letter is put up.

kg. gll
19/3/15

8) In the proposal, the members of
want the Govt to adopt a procedure, which he
himself condemns. The circular is issued by the
Chief Court in the exercise of the power vested in
them under law, and how could Govt interfere
with the independence of the Judges, to obstruct the
members own argument.

9) Secondly, the Judges of the Chief Court
consider that the circular is not within
their rights, and does not take any undue
direction from the Government. The
Chief Judge has given ^{very good} arguments in support
of his view.

Serial
No.

10) The statement of the second judge that the circular was issued at the instance of it is made much by the 3^d judge and the remarks appear to be irrelevant for the discussion of the present question.

11) Please put up a draft that the objection to the circular cannot be sustained and that the discretion of the magistrates is not thereby taken away.

12) See^d with a draft accordingly
18/3/15

18/3/15

First member

Draft appd: by First member
23-3-15.
13/3

13) Issue
18/3/15

3.

To The Registrar, Chief Court

The D. H. Shiroga for communication
to the members.
No. 3354-5 of 3-4-15.

States that the objection to the circular
can not be sustained & that the discretion of
the magistrates is not thereby taken away.

File No. 245-11
Serial No. 1

Diary No. of letter replied to _____

No. 72795

General and Revenue Secretariat

To

The Rep. asst.

Sir,

Date of issue 19. 2. 1915.

Signed by *M. G. Sreenivasa Iyer*

I am directed to invite your attention to subject No. 419 of the ~~Proceedings of the~~ Representative Assembly of 19...13.....and the reply of ~~Government thereto~~ in the matter of *of a circular letter issued by the Chief Court regarding (the awarded) inadequacy of punishment in exercise case* and to request you to be so good as to favour Govt. with the opinion of the Chief Court ~~your opinion~~ in the matter at an early date.

List of enclosures _____

Drafted by R. 13/2/15

Copied by _____

Examined by _____

I have, etc.,

E. J. J. J.
For Secretary to Govt.

SL

2

The CHIEF JUDGE : -

3
Encl to Ch
245-14-2

Put up

The objection to the circular is devoid of substance. The Chief Court has by Section 10 of its Regulation^x superintendence over all the Criminal Courts and is entitled to make known its views of the law and its policy to all the Criminal Courts. The Chief Court is at perfect liberty to express in its judgments its views as to the adequacy of punishments not only in the particular case but generally. It is open to it to say that in general a certain class of crime requires severe punishment. That is not an interference with the discretion of Magistrates, who are entitled in each case to deal with the facts as they please; but Magistrates of course must regulate the exercise of their discretion by the opinion of the Chief Court as the Court of appeal; that must always be so where^xver there is a court of appeal from the Magistrate's decision: and it cannot be suggested that it is not useful for Magistrates to know what are the views of the Chief Court on the subject of particular classes of offences. In any particular case by its judgment it is open to the Chief Court to state its opinion that a Magistrate has not exercised his discretion ^{properly} because the class of offences with which he is dealing requires more severe sentences than he has imposed; and having stated its opinion, to get that judgment reported in the Law Reports or circulated to all Magistrates, and no one could suggest in that case that anything^a wrong had been done, and the issue of the circular seems to be on the same footing.

The representation suggests that the Chief Court can enhance punishments ^{when} ~~where~~ necessary: that is so but the enhancement of sentences is an unsatisfactory proceeding in most cases and prevention in this as in other matters is better than cure. If an accused person is convicted he has a right of appeal against his sentence whenever he has a right of appeal against his conviction, and it is always easier to get

2

a sentence reduced than it is to get it enhanced.

In my opinion no fault can reasonably be found with the circular unless by offenders or would be offenders against the Excise Laws.

Mr. Justice K.S. CHANDRASEKHARA AIYAR:-

I quite agree. These circulars, I may add, were issued by the Chief Court at the instance of Government and the Excise Commissioner (Vide the late Dewan Sir P.W. Krishna Murti's D.O. ^{of} 23-1-1902 and the Excise Commissioner's letter of 7th January 1911).

S.R.
V in SR 229-12

Mr. Justice T. PARAMASIVA IYER :-

While I agree that there can be no objection to a circular of the kind under notice on pre purely technical grounds, I am strongly opposed on principle to the issue of such a circular at the instance of the Executive as inconsistent with the position and functions of this Court and I for one would deprecate summary action as in the present case under pressure from the Executive Head of the Administration acting in the interests of Revenue-earning Department (Vide Dewan's D.O. dated 23-1-02 and the Chief Judge's order dated 27-1-1902 passed without waiting for the official reference promised and without previous consultation with his colleagues).

The learned Chief Judge has the following remarks in his note on this subject:-

'It cannot be suggested that it is not useful for Magistrates

(5)

Magistrates to know what are the views of the Chief Court on the subject of particular classes of offences. In any particular case, by its judgment, it is open to the Chief Court to state its opinion that a Magistrate has not exercised his discretion properly because the class of offences with which he is dealing requires more severe sentences than he has imposed; and having stated its opinion to get that judgment reported in the Law Reports or circulated to all Magistrates.'

i I entirely agree with these remarks and I would leave it to the Government which has the power of rewarding and punishing the magistracy to enforce the opinions of the Chief Court as they appear in reported judgments on the magistracy and to press its views as to the sufficiency of sentences in any particular class of offences through the Government Advocate during the hearing of cases involving the question.

H. J. Palmer

R E G I S T R A R.

HA

N.G.

Re circular about punishment for offences under excise laws

G.R.S. 28]

(6)

2413

File No. 245 of 1914

Serial No. 3

Diary No. of letter replied to _____

GENERAL AND REVENUE
SECRETARIAT.

()

Proceedings of the Government of His Highness
the Maharaja of Mysore

READ—

, the

191 .

Date of issue 3 / 4 / 1915.

Signed by M. G. Sreenivasulu

Subject No 419 of the Representative
Assembly of 1913 praying that the
circular issued by the Chief Comr,
directing the attention of Magistrates
to the general inadequacy of
~~ORDER THEREON—No~~
sentences passed for offences under
excise laws; may be recommended to be
withdrawn.

2) Correspondence ending with
letter no. 4111 dated the 9th March
180
1915 from the Reps, Chief Comr,
M. over.

- SUBJECT.

7)
Inwarding the opinion of the judges
of the Chief Court in the matter:

Order thereon - no. J 3354-5.

Got Consider that the
objection to the circular cannot
be sustained and that the
discretion of the Magistrate is
not thereby taken away.

Hin
23/3/15

SMP
For OHS: See '69-10

To The Registrar, Chief Court
The Dy. Commr, Shewang dist.,
for communication to the R. N. member
concerned

Copy to the D. N. Sec 1

HK
22-3-15